

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In Re RAPID SETTLEMENTS, LTD'S	)	
APPLICATION FOR APPROVAL OF	)	NO. CV-13-5030-LRS
TRANSFER OF STRUCTURED	)	
SETTLEMENT PAYMENT RIGHTS,	)	ORDER GRANTING MOTION FOR
	)	REMAND TO STATE COURT
	)	
	)	
	)	

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The long and tortured history of this litigation is found in the pleadings filed in In Re Rapid Settlements, Ltd's Application For Approval Of Transfer Of Structured Settlement Payment Rights, Eastern District of Washington Cause No. CV-12-5115-LRS. The underlying action herein was remanded to state court on November 6, 2012, in a prior Order Granting Motion For Remand To State Court (ECF No. 21) in the foregoing cause. With exceptions noted hereafter, very little has changed during the interim.

To avoid repetition, the court will not describe the numerous legal proceedings both in state and federal courts in Washington and Texas inasmuch as this information can be gleaned by a reading of the briefs, affidavits and related materials which have been filed both here and in the prior litigation (CV-12-5115-LRS).

1 After remand of this litigation to the Benton County Superior  
2 Court, FinServ Casualty Corporation (FinServ) and A.M.Y. Property and  
3 Casualty Corporation (A.M.Y.) were joined in the Benton County Superior  
4 Court litigation pursuant to the motion of Symetra following a belated  
5 claim that those entities have a security interest in proceeds being  
6 sought by Symetra. Symetra is attempting to enforce the terms of a  
7 state court decree against the challenges of FinServ and A.M.Y. as  
8 well as any others.

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10 Not wishing to accept the authority and jurisdiction of the  
11 Benton County Superior Court, FinServ and A.M.Y. filed a Notice of  
12 Removal to this court pursuant to 28 U.S.C. § 1332(a)(1), (a)(2),  
13 1441, and 1446. Also pending before this court are defendants'  
14 motions to dismiss pursuant to Federal Rule of Civil Procedure 12 (ECF  
15 No. 2, 3, and 4). Symetra's Motion for Remand to State Court (ECF No.  
16 13) summarizes once again its concerns and objections to additional  
17 proceedings in this court in light of the history of this litigation.

### 18 **LEGAL ANALYSIS**

19 A party seeking to remove a state court action to the federal  
20 court has the burden of proving removal is proper. In determining  
21 validity of a removal notice, a strong presumption exists against  
22 removal and as noted by Symetra, . . . "doubts are resolved in favor  
23 of remand." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992).  
24 Moreover, the courts have for many years reminded us that removal  
25 statutes are strictly construed against removal because they deprive  
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1 state courts of jurisdiction over cases which are otherwise properly  
2 before the state court. *Abrego v. Dow Chem. Co.*, 443 F.3rd 676, 685  
3 (9<sup>th</sup> Cir. 2006).

4 The court finds that the litigation pending in Benton County  
5 Superior Court prior to removal is an ancillary action. It is not new  
6 litigation which reestablishes or reopens the right of removal by a  
7 party more than one year after the original litigation was commenced.

8 While FinServ and A.M.Y allege diversity jurisdiction exists, for  
9 the reasons stated in the briefing provided by Symetra, the removing  
10 parties have not proven that an amount in excess of \$75,000 has been  
11 placed in issue. Given the ancillary nature of the proceeding in  
12 Benton County Superior Court, the lack of timeliness in removal and  
13 the failure to carry forth its burden of showing an amount at issue in  
14 excess of \$75,000 in this proceeding, the court finds that Symetra's  
15 Motion To Remand should be GRANTED.  
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17 Symetra suggests that FinServ and A.M.Y. have had no objectively  
18 reasonable basis for seeking removal and have done so solely for  
19 further delay. This argument has merit. The court concurs that the  
20 award of fees and costs to Symetra is appropriate. Moreover, the  
21 initiation of further legal proceedings of a similar nature by FinServ  
22 and A.M.Y. or related entities in this court concerning matters which  
23 should remain in Benton County Superior Court may well, if then  
24 appropriate, subject those parties and counsel to imposition of  
25 sanctions. At this juncture, FinServ and A.M.Y. have, insofar as  
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1 known, no readily apparent ongoing business purpose. The arguments  
2 for removal vary little from the prior motion to remand which the  
3 court granted. The principle claims for removal associated herein  
4 have little, if any, support in the case law. Accordingly, it is  
5 hereby

6 ORDERED:

7  
8 1. Symetra's Motion For Remand (ECF No. 13) is **GRANTED** and the  
9 above entitled action is remanded to the Superior Court of Benton  
10 County, Washington;

11 2. Plaintiff shall be awarded its fees and costs in an amount to  
12 be determined following the filing of a petition for the same;

13 3. The pending motions of FinServ and A.M.Y. referenced above  
14 are hereby **DENIED AS MOOT** (ECF. Nos. 2,3, 4 and 15);

15 4. This file shall be closed.

16 **DATED** this 26th day of June, 2013.

17  
18 *s/Lonny R. Suko*

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20 LONNY R. SUKO  
21 UNITED STATES DISTRICT JUDGE  
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